



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1228]

Certain Automated Storage and Retrieval Systems, Robots, and Components Thereof

Notice of a Commission Determination to Review in Part a Final Initial Determination and Order No. 33; and, On Review, to Find No Violation of Section 337 Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") final initial determination ("ID") issued on December 13, 2021, finding no violation of section 337, and Order No. 33 ("*Markman* Order"), issued on July 22, 2021, in the above-referenced investigation. On review, the Commission has determined to find no violation of section 337. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 6, 2020, based on a complaint filed on behalf of AutoStore Technology AS of Norway; AutoStore AS of Norway; and AutoStore System Inc. of Derry, New Hampshire (collectively, "Complainants"). 85 FR 71096 (Nov. 6, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated storage and retrieval systems, robots, and components thereof by reason of infringement of claims 1-6 of U.S. Patent No. 10,093,525 (“the ’525 patent”); claims 1 and 18-20 of U.S. Patent No. 10,294,025 (“the ’025 patent”); claims 1-4 and 11-15 of U.S. Patent No. 10,474,140 (“the ’140 patent”); claims 1, 2, and 5-15 of U.S. Patent No. 10,494,239 (“the ’239 patent”); and claim 19 of U.S. Patent No. 10,696,478 (“the ’478 patent”). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named eight respondents: Ocado Group Plc; Ocado Central Services Ltd.; Ocado Innovation Ltd.; Ocado Operating Ltd.; Ocado Solutions, Ltd.; Tharsus Group Ltd.; and Printed Motor Works Ltd., all of the United Kingdom; and Ocado Solutions USA Inc. of Tysons Corner, Virginia (collectively, “Respondents”). *Id.* at 71097. The Office of Unfair Import Investigations did not participate as a party in this investigation. *Id.*

Respondent Printed Motor Works Ltd. was terminated from the investigation based on withdrawal of allegations in the complaint. *See* Order No. 19, at 1 (June 2, 2021), *unreviewed by* Comm’n Notice (June 22, 2021).

The asserted claims of the ’140 patent and claims 1 and 18 of the ’025 patent were terminated from the investigation. *See* Order No. 59 (August 9, 2021), *unreviewed by* Comm’n Notice (Aug. 20, 2021). Complainants’ allegations that Respondents’ 500 series robot and redesigned 500 series robot infringe claims 19 and 20 of the ’025 patent were also terminated from the investigation. *Id.*

The *Markman* Order, issued on July 22, 2021, construed claim terms from all five asserted patents. *See* Order No. 33 (July 22, 2021). The *Markman* Order found claims 2 and 3 of the ’525 patent and claims 5, 6, 14, and 15 of the ’239 patent to be indefinite. *Id.* at 35-39.

An evidentiary hearing was held on August 2-6, 2021.

On December 13, 2021, the ALJ issued the final ID finding no violation of section 337 and his recommended determination (“RD”). Specifically, the ID found the accused products infringe claims 1 and 6 of the ’525 patent; claims 1, 2, and 7-13 of the ’239 patent; and claim 19 of the ’478 patent; but those claims are invalid for failure to comply with the written description requirement and the enablement requirement of 35 U.S.C 112, para. 1. The ID also found claims 4 and 5 of the ’525 patent invalid as indefinite under 35 U.S.C 112, para. 2, because they depend from claims 2 and 3 of the ’525 patent, which the ALJ found indefinite in the *Markman* Order. As for the ’025 patent, the ID found the accused products do not infringe claims 19 and 20 and the claims have not been shown to be invalid. The ID further found that Complainants have shown that the domestic industry requirement has been satisfied with respect to the asserted patents under section 337(a)(3)(B).

The parties filed a joint motion to extend the time for them to file petitions for review from December 27, 2021 (with responses due January 4, 2022) to December 30, 2021 (with responses due January 10, 2022). On December 14, 2021, the Chair granted the motion.

On December 30, 2021, Complainants and Respondents filed separate petitions for review of the ID. On January 10, 2022, they filed separate replies to the petitions for review.

The Commission solicited submissions from the public on public interest issues raised by the recommended determination. On January 14, 2022, the Kroger Co. submitted comments on the public interest for the Commission to consider should the Commission find a violation.

Having reviewed the record of the investigation, including the final ID, the *Markman* Order, and the parties’ submissions, the Commission has determined to review in part the final ID and the *Markman* Order. Specifically, the Commission has determined to review: (1) the ALJ’s construction of the terms “vehicle body” and “a plurality of [rolling members/wheels] attached to the vehicle body” in the asserted claims of the ’525, ’239, and ’478 patents; (2) the ID’s finding that claims 2-5 of the ’525 patent and claims 5, 6, 14, and 15 of the ’239 patent are invalid as indefinite; (3) the ID’s construction of the term “a displacement motor” in claim 1 of

the '025 patent; and (4) the ID's findings that the economic prong of the domestic industry is satisfied. Among other findings, the Commission has determined not to review the ID's finding that the asserted claims of the '525, '239, and '478 patents are invalid for failing to comply with the written description and enablement requirements of 35 U.S.C. 112, para. 1.

On review, the Commission affirms with modification the ALJ's construction of the terms "vehicle body" and "a plurality of [rolling members/wheels] attached to the vehicle body" in the claims of the '525, '239, and '478 patents. The Commission also affirms the ALJ's finding of indefiniteness with respect to certain claims of the '525 and '239 patents and the ID's construction of the term "a displacement motor" in claim 1 of the '025 patent with the additional analyses provided in its opinion. Having adopted the ID's findings that the asserted claims of the '525, '239, and '478 patents are invalid and the asserted claims of the '025 patent are not infringed, the Commission has determined to take no position on the economic prong of the domestic industry requirement.¹ Accordingly, the Commission has determined to affirm with modifications the ID's finding of no violation of section 337. The investigation is terminated in its entirety. The Commission's reasoning in support of its determination is set forth more fully in its opinion.

The Commission vote for this determination took place on March 10, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR Part 210.

By order of the Commission.

Issued: March 10, 2022.

Lisa Barton,

Secretary to the Commission.

¹ Chair Kearns would affirm the ID's finding that the economic prong was not established with respect to AutoStore USA's investments.

